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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re CARLA V., a Person Coming Under the Juvenile Court Law.	B294143 (Los Angeles County Super. Ct. No. DK23683A)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. A.A., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Steven E. Ipson, Commissioner. Affirmed.

Richard L. Knight, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, Erica Edelman-Benadon, Deputy County Counsel, for Plaintiff and Respondent.

A.A. (mother) appeals from an order terminating parental rights[1] under Welfare and Institutions Code section 366.26.[2] Mother's only contention on appeal is that the court erroneously found that the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA) did not apply. We find no error, and affirm the court's section 366.26 order terminating parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

Because ICWA compliance is the only issue raised in this appeal, we briefly recount the facts and procedural background relevant to that issue. The Los Angeles County

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[1] The order also terminated the parental rights of the child's alleged father, Jose V. (father). Father is deceased and is not a party to this appeal.

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Department of Children and Family Services (Department) began an investigation on June 7, 2017, after mother's daughter, Carla V., tested positive for amphetamines at birth. Mother identified Jose V. (father) as Carla's father. Father died of gunshot wounds on May 26, 2017, before Carla was born. The Department's investigator learned that mother has a lengthy history of dependency cases involving six of Carla's half-siblings, based in part on mother's failure to comply with court-ordered drug testing. Father had an open dependency investigation in Kern County for other children he shared with his legal spouse. The Kern County social worker informed the Department social worker that a paternal uncle was under the influence of drugs in the children's presence. On June 12, 2017, the Department filed a petition under section 300, subdivision (b)(1), alleging that mother's history of drug use placed Carla at risk of harm, and that father was deceased and unable to provide ongoing care, supervision, and basic necessities. The petition included an Indian Child Inquiry Attachment indicating that mother verbally communicated to the social worker on June 7, 2017, that Carla had no known Indian ancestry.

At the June 12, 2017 detention hearing, mother submitted a Parentage Questionnaire, identifying father as Carla's parent and indicating that she and father were not married, but were living together at the time of conception. Mother's responses also indicated that father was not present at the birth and did not openly hold himself out as a parent because he was deceased. Mother also filed an

ICWA-020 Parental Notification of Indian Status form indicating she had no Indian ancestry.

At the detention hearing, mother confirmed that father was the biological father of the child, and that father was deceased. The court stated it "wanted to inquire about . . . American-Indian ancestry on behalf of the father," and mother's counsel responded that mother was not aware of any American-Indian ancestry for father. The court reviewed mother's Parentage Questionnaire, and then returned to the question of American-Indian ancestry, asking if mother had any contacts for father. Mother had the name of a paternal uncle but would need to turn on her phone for his contact information. The court ordered the Department to "investigate father's American-Indian ancestry and contact mother in order to determine what relatives father has who can inform the department about father's American-Indian ancestry, including paternal uncle, Mario [V]." The language of the minute order is slightly different, stating that the Department was to "investigate any possible Indian heritage with paternal relatives as to father." The court found father to be an alleged father.

According to the jurisdiction and disposition report filed on July 11, 2017, mother denied any Indian ancestry, and no information could be obtained from father because he was deceased. The report did not contain any information about activity by the Department to investigate father's possible Indian ancestry, including whether mother provided contact information for paternal uncle. The Department

made repeated unsuccessful efforts to contact mother[3] and maternal grandmother by phone. A letter mailed to mother and an e-mail sent to maternal grandmother also did not generate a response. At the adjudication hearing on September 11, 2017, the court sustained the petition allegations against mother, and dismissed the allegation against father. Minor's counsel reminded the court that it had asked the Department to investigate father's possible Indian ancestry. The court asked how long the Department would need, and the Department estimated a few weeks, noting "if there's anybody to interview." The court continued the disposition hearing at the request of mother's counsel.

The Department's October 30, 2017 Last Minute Information stated that a social worker attempted to reach paternal grandmother, Maria M[.], to inquire about father's possible Indian ancestry. The social worker reported that none of the four different phone numbers she tried resulted in a response from the paternal grandmother. The Department also informed the court that "according to departmental policies no ICWA notices can be send [*sic*] to tribes, if a father is alleged only. At this time the

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[3] It appears that a different social worker may have been able to connect with mother on June 30, 2017 to set up a visitation schedule, after the social worker tried for several days. Mother told the social worker she was unable to attend her first visit on July 3, 2017, and did not confirm scheduled visits for July 6 and 7, 2017, so the visits were cancelled.

Department respectfully asks the court to order that ICWA does not apply."

Mother did not appear at the disposition hearing on October 30, 2017, but the hearing went forward over mother's counsel's objection. Responding to the court's question about whether ICWA was implicated, county counsel referred to the Department's Last Minute Information report summarizing efforts to interview paternal relatives. County counsel stated "none of the relatives ever responded to the Department so I don't think there's enough to trigger notice . . . ." County counsel asked for a finding that ICWA did not apply. After both mother's counsel and minor's counsel indicated they had no disagreement, the court found ICWA did not apply.[4]

Mother did not appear at any of the hearings scheduled under section 366.26, although the hearing was continued several times to ensure that the Department did its due diligence in searching for mother. On April 11, 2018, the Department filed a permanency planning status review

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[4] The court's ICWA finding is not reflected in the minute order for the disposition hearing. The reporter's transcript of the October 30, 2017 hearing was not initially part of the record on appeal. On January 29, 2019, county counsel requested the reporter's transcript for that hearing pursuant to the California Rules of Court, rule 8.410(b). The requested reporter's transcript was filed with this court on April 5, 2019, after briefing was already completed, but before this court began its review of the case. We have considered it as part of the record on appeal.

report that included a birth certificate identifying father as Carla's father.

On September 27, 2018, the court terminated mother's parental rights and reiterated its earlier finding that ICWA did not apply. Mother's counsel made no objection to the court's ICWA finding. On November 20, 2018, mother appealed the order terminating her parental rights.

DISCUSSION

Overview of ICWA

"Passed in 1978, the Indian Child Welfare Act . . . formalizes federal policy relating to the placement of Indian children outside the family home." (*In re W.B.* (2012) 55 Cal.4th 30, 40.) ICWA was enacted in response to "rising concern in the mid-1970's over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes." (*Mississippi Choctaw Indian Band v. Holyfield* (1989) 490 U.S. 30, 32.)

The purpose of ICWA is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or

adoptive homes which will reflect the unique values of Indian culture . . . .” (25 U.S.C. § 1902; *In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8.) “For purposes of ICWA, an ‘Indian child’ is a child who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. (25 U.S.C. § 1903(4); see § 224.1, subd. (a) [adopting federal definitions].)” *(In re Breanna S.* (2017) 8 Cal.App.5th 636, 649, fn. 5 (*Breanna S.*).) “In California, . . . persistent noncompliance with ICWA led the Legislature in 2006 to ‘incorporate[ ] ICWA’s requirements into California statutory law.’ [Citations.]” (*In re Abbigail A.* (2016) 1 Cal.5th 83, 91; see also *Breanna S.*, *supra*, at p. 650 [California law “incorporates and enhances ICWA’s requirements”].)

Mother’s standing to appeal

The Department contends mother’s ICWA challenge must fail because father was only an alleged father. The Department relies upon *In re Daniel M.* (2003) 110 Cal.App.4th 703 (*Daniel M.*), which held that an alleged father lacked standing to challenge ICWA compliance. That case involved an appeal by a father who claimed some Indian heritage, but who had not yet completed paternity testing. The court had asked the alleged father to bring the ICWA issue to its attention if he established biological paternity. (*Id.* at p. 706.) Father appealed the termination of parental

rights, arguing that ICWA's notice requirements were violated. The appellate court dismissed father's appeal, explaining: "The ICWA defines 'parent' as 'any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom.' (25 U.S.C. § 1903(9).) The ICWA expressly excludes from the definition of 'parent' an 'unwed father where paternity has not been acknowledged or established.' (*Ibid*.)" (*Daniel M.*, at p. 708.) Because paternity had neither been acknowledged or established, the alleged father lacked standing to raise ICWA compliance issues. (*Id*. at pp. 708–709.)

We find mother's claim to be substantively different than that at issue in *Daniel M.*, where the father's own delay and equivocation prevented him from being recognized as the child's biological father. Here, no one disputed mother's assertion that father was Carla's biological father, father's name appears on Carla's birth certificate, and there was no mechanism for father—who was already deceased—to establish paternity. (Cf. Cal. Rules of Court, rule 5.635(h); *In re J.H.* (2011) 198 Cal.App.4th 635, 650 [as part of the parentage determination, rule 5.635(h) requires the court to decide if the individual was a biological father].) Given the particular facts before us, we agree with the advice given in California Juvenile Courts Practice and Procedure, "*Daniel M.* should not be taken too far or read to automatically exclude the possible application of the ICWA when the Indian heritage is through an alleged father, especially if

that alleged father acknowledges paternity." (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2019) § 2.125[1], p. 2-421.) Although father was not alive to acknowledge paternity, that is an insufficient basis to deny mother standing to raise ICWA compliance concerns, particularly in light of case law recognizing the right of a non-Indian parent to raise the issue of ICWA compliance on appeal. (*In re O.C.* (2016) 5 Cal.App.5th 1173, 1180, fn. 5.)

ICWA duty of inquiry

We review the trial court's ICWA finding for substantial evidence. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467.) We must uphold the court's orders and findings if any substantial evidence, contradicted or uncontradicted, supports them, and we resolve all conflicts in favor of affirmance. (*In re Alexzander C.* (2017) 18 Cal.App.5th 438, 446.)

The court and the Department have an affirmative and continuing duty to inquire whether a child who is the subject of a dependency proceeding is or may be an Indian child. The scope of that duty is defined in regulations promulgated under ICWA (see 25 C.F.R. § 23.107 et seq. (2018)) and both the current and former versions of section 224.2 and 224.3. (Former Welf. & Inst. Code, §§ 224.2, 224.3, added by Stats. 2006, ch. 838, §§ 31, 32, pp. 6565–6569 and repealed and replaced by Stats. 2018, ch. 833, §§ 4–7, pp. 5348–5352, eff.

Jan. 1, 2019.)[5] The duty to inquire was recently described as follows: "Juvenile courts and child protective agencies have 'an affirmative and continuing duty to inquire' whether a child for whom a section 300 petition has been filed is or may be an Indian child. [Citations.] If the court or social worker 'knows or has reason to know' the child is or may be an Indian child, the social worker 'is required to make further inquiry regarding the possible Indian status of the child, and to do so as soon as practicable, by interviewing the parents, Indian custodian, and extended family members' and 'any other person that reasonably can be expected to have information regarding the child's membership status or eligibility' . . . . [Citations.]" (*In re N.G.* (2018) 27 Cal.App.5th 474, 481.) The circumstances under which there is "reason to know" that a child may be an Indian child include when a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one of the child's biological parents, grandparents or great-grandparents are or were a member of a tribe. (Former § 224.3, subd. (b).) To satisfy the duty of further inquiry, the court and the Department must "interview the child's parents, extended family members, . . . and any other person who can reasonably be expected to have information concerning the child's membership status or eligibility" in an

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[5] Because the former versions of sections 224.2 and 224.3 were in effect at the time of the proceedings on appeal, our analysis includes citations to those versions.

Indian tribe. (*In re Michael V.* (2016) 3 Cal.App.5th 225, 233; see also former § 224.2, subd. (a)(5)(C); former § 224.3, subd. (c); *In re K.R.* (2018) 20 Cal.App.5th 701, 706.)

In *In re Hunter W.*, *supra*, 200 Cal.App.4th 1454, the mother claimed Indian heritage through her father and deceased paternal grandmother, but she could not identify a particular tribe and did not know of any relative who was a member of a tribe. She did not know her father's contact information, and did not mention other relatives who would have more information. She then claimed on appeal that the Department could have questioned other relatives for information. The appellate court rejected mother's argument, noting that mother had not provided any authority to support her argument that the ICWA had been triggered by her statements. (*Id.* at pp. 1467–1468.) The ICWA does not obligate the court or the Department "to cast about" for investigative leads. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199.) There is no need for further inquiry if no one has offered information that would give the court or the Department reason to know that a child might be an Indian child. This includes circumstances where parents "fail[ ] to provide any information requiring followup" (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1161; see also *In re B.H.* (2015) 241 Cal.App.4th 603, 608; *In re C.Y.* (2012) 208 Cal.App.4th 34, 42), or if the persons who might have additional information are deceased (*In re J.D.* (2010) 189 Cal.App.4th 118, 124), or refuse to talk to the Department (*In re K.M.* (2009) 172 Cal.App.4th 115, 119).

Mother contends the trial court erred when it found the ICWA inapplicable at the section 366.26 hearing on September 27, 2018. She argues that the court ordered the Department to conduct further inquiry as to both mother and father's family lineage, and the Department did not adequately document what investigative efforts were undertaken. The Department argues there is no reversible error because neither the court nor the Department had any reason to know that there was any possibility that Carla was an Indian child as defined in the ICWA.

The court made no error in finding the ICWA inapplicable at the section 366.26 hearing. The court adequately inquired into the possibility that Carla was an Indian child, and no party identified any information that would warrant further inquiry. The fact that the court ordered the Department to make additional efforts did not restrict the court's authority to later determine, on the facts before it, that the ICWA did not apply.

Mother argues that the Department's failure to document its efforts to contact paternal uncle warrants reversal. Mother's opening brief recounts three recent published decisions in which the appellate courts remanded the matter based on inadequate inquiry: *In re N.G.*, *supra*, 27 Cal.App.5th 474; *In re K.R.*, *supra*, 20 Cal.App.5th 701; *In re Elizabeth M.* (2018) 19 Cal.App.5th 768. However, in each of these cases, there was some indication that a relative might have relevant information about possible Indian ancestry. For example, in *In re K.R.*, the social services

agency had information that the children might have Cherokee heritage through their father, and paternal relatives were involved in the proceedings. (*In re K.R.,* at p. 705, fn. 1.) In that case, the court rejected the Department's argument that it was not obliged to document its investigative efforts, noting "a social services agency has the obligation to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status. [Citation.] The agency cannot omit from its reports any discussion of its efforts to locate and interview family members who might have pertinent information and then claim that the sufficiency of its efforts cannot be challenged on appeal because the record is silent." (*Id.* at p. 709.) In *In re Elizabeth M.*, *supra*, 19 Cal.App.5th at pp. 778–779, 787–788, the appellate court found the trial court erroneously determined that ICWA did not apply, where mother had stated she might have Indian heritage through the Red Tail tribe on her father's side and provided contact information for the child's great grandmother, but the Department had failed to interview identified family members or provide complete and accurate information to the identified tribes. In *In re N.G.*, *supra*, 27 Cal.App.5th at pp. 481–482, father had reported possible Indian ancestry, and the appellate court found a failure to comply with ICWA where the agency had not conducted adequate inquiry of paternal grandfather or attempted to contact paternal cousins who father had identified as registered members of the Cherokee tribe.

Mother's argument here ignores the first step for analyzing whether the Department has a duty to conduct any further inquiry: that there is reason to know a child may be an Indian child. (Former § 224.3, subd. (c) [if the court or social worker knows or has reason to know an Indian child is involved, the social worker is required to make further inquiry]; 25 C.F.R. § 23.107(b) (2018).) When there is no substantial evidence to demonstrate the court or the Department had reason to know an Indian child is involved, reversal is not required. (*In re Hunter W.*, *supra*, 200 Cal.App.4th at pp. 1467–1469.)

In the current case, mother has not demonstrated there was a viable lead that would require the Department "to make a meaningful effort to locate and interview extended family members to obtain whatever information they may have as to the child's possible Indian status." (*In re K.R., supra,* 20 Cal.App.5th at p. 709.) From the outset of the case, mother denied any Indian ancestry. She verbally communicated that information on June 7, 2017; she completed form ICWA -020 (Parental Notification of Indian Status) stating she had no Indian ancestry as far as she knew; and her attorney confirmed at the June 12, 2017 detention hearing that mother was not aware of any Indian ancestry. The court made a finding at the detention hearing that it had no reason to believe ICWA applied to mother. Mother also informed the court that she was unaware of any Indian ancestry for father. The court inquired further, asking mother to provide contact information for father's

side of the family to the Department. Understanding that mother had paternal uncle's contact information in her phone, the court ordered the Department to contact paternal relatives to inquire into father's possible Indian ancestry. While there is no evidence in the record that the Department obtained paternal uncle's contact information from mother, there is evidence that it tried to contact paternal grandmother at four different telephone numbers. All of Department's attempts to reach paternal grandmother were unsuccessful, as were its attempts to reach mother to interview her about the case.

Although the court ordered the Department to contact paternal relatives to find out whether Carla might be an Indian child, that order was not based on a suggestion by mother or anyone else that father's family had any Indian ancestry. Indeed, the court made its order to contact paternal family members despite there being no claim or evidence whatsoever of Indian heritage. Neither the court nor the Department had any reason to know that Carla might be an Indian child, and so no further inquiry was necessary. Even so, the Department made efforts to follow up on the court's order and documented its unsuccessful efforts to contact paternal grandmother. Further, there is no evidence in the record that mother provided any contact information for paternal relatives to the Department, or that any relatives had any information about possible Indian ancestry. Without some evidence to demonstrate a possibility of Indian ancestry, and indeed without even some

reason to speculate that there was possible Indian ancestry, mother cannot demonstrate error, and reversal is not warranted.

DISPOSITION

The court's section 366.26 order terminating parental rights is affirmed.

MOOR, J.

We concur:

RUBIN, P. J.

BAKER, J.